IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 777 OF 2006

1. Shankuntala Shyam Sunder Mankani,
2. Shyam Sunder Naraindas Mankani,
3. Ajay Shyam Sunder Naraindas Mankani. ...Applicants

V/s.

State of Maharashtra & Anr. ...Respondents

Shri A.P. Mundargi i/b. Manilal Kher Ambalal & Co. for Applicants.
Ms.S.D. Shinde, APP for the State.
Shri Ashok K. Wanwani for the Complainant.

CORAM : V.M. KANADE, J.

DATED : MARCH 9, 2006

P.C. :-

. Heard learned Counsel for the applicants, learned Counsel for the complainant and learned APP for the State.

. This is an application for anticipatory bail. The applicants have an apprehension that they are likely to be arrested in connection with an offence which is registered by the Santacruz Police Station for the offence punishable under Sections 498A, 120B and 506 of

the IPC vide C.R.No.58/2006. This complaint was lodged on 21st February, 2006.

2. The brief facts which are relevant for the purpose of deciding this criminal Application are as under:-

. The applicants are the mother-in-law, father-in-law and brother-in-law, respectively, of the complainant. The son of the applicants Sanjay got married with the complainant on 7th July, 1995. Thereafter, there were several differences and disputes between the husband and wife. The applicants' son and the complainant were staying at Dubai since the date of her marriage. Finally, sometime in December, 2001, it was agreed that the differences between husband and wife were not reconcilable and therefore, they decided to file a petition for divorce by mutual consent. It was agreed that the couple would file divorce proceedings in India and accordingly, an agreement was executed on 8th December, 2001. According to the applicants, after the agreement was executed and the settlement amount which was fixed in the agreement was paid, the complainant

returned to her parents on 19th April, 2002. This fact is disputed and denied by the complainant's counsel and it is the case of the complainant that she started staying in the bungalow at Juhu which is owned by her husband and his family. According to the applicants, their son and the complainant Malti decided to file a petition for divorce by mutual consent in the Family Court at Bandra and the petition was forwarded by the complainant for divorce by mutual consent on 31st December, 2005. It is the case of the applicants that the complainant between 15th February, 2006 to 21st February, 2006 entered their bungalow at Juhu and started staying there illegally. Accordingly, the applicants no.2 and 3 filed the complaint with the Santacruz Police Station on 17th February, 2006. However, no action was taken by the police. Therefore, a suit was filed on 21st February, 2006 by the applicants no.2 and 3 before the City Civil Court against the complainant and her family members seeking injunction against them. On 21st February, 2006, the learned Judge of the City Civil Court passed an order restraining the complainant and her family members from

making any forcible entry in the suit property. It is the case of the applicants that as a counter blast to the order of injunction which was passed against the complainant and her family members, an FIR was lodged against the applicants and also against their son on the very same day i.e. on 21st February, 2006.

3. It is submitted by the learned Counsel appearing on behalf of the applicants that the false and frivolous complaint has been filed. It is submitted that the complainant had signed the agreement regarding the settlement of maintenance amount and it was agreed that the complainant and the son of the applicants will file a petition for divorce in India, in the Family Court at Bandra. It is submitted that after the entire amount which was agreed to be paid towards the maintenance, was paid to her, she returned to India in 2002 and thereafter, she had no contact with the applicants or their son. It is submitted that therefore, the complaint which is made is patently false complaint and the fact regarding the agreement executed by the complainant with their son was suppressed, the fact that

the complainant had returned to India also has been suppressed. It is submitted that this false case has been filed only to pressurise the applicants to settle the civil dispute which was pending in the City Civil Court.

4. Learned Counsel appearing on behalf of the complainant, on the other hand, vehemently opposed the submissions made by the learned Counsel for the applicants. He submitted that the complainant was residing in the Bungalow in Juhu and that she had challenged the order which was passed by the learned Judge of the City Civil Court. He submitted that the complainant was working in the KLM Airlines and that she was earning almost an amount of Rupee One Lakh dirhams per year and therefore, the amount which was recorded in the settlement deed was a very meagre amount. He submitted that the said amount was signed under the circumstances which were beyond the control of the complainant as she was staying in Dubai and various false statements have been made against the complainant. He submitted that therefore, the allegations which are

mentioned in the complaint of the complainant prima facie showed that the offence punishable under Section 498A, 406 was made out. It was submitted that the ornaments of the complainant had not been returned. Learned Counsel on behalf of the applicants, at this stage, candidly pointed out that whatever ornaments which are mentioned in the complaint will be returned or will be deposited with the police and if any further list is given, after it is verified, all those ornaments will be returned.

5. I have given my anxious consideration to the submissions made by the learned Counsel for the applicants and the learned Counsel for the complainant. Since this was a dispute essentially which had arisen out of the matrimonial proceedings and since both the parties had expressed their intention to explore the possibility of settlement, the matter was adjourned on 1st March, 2006. Today, I am told that it is not possible to settle all the disputes between the parties. In my view, prima facie case has been made out by the applicants for grant of anticipatory bail. It is an

admitted position that the complainant came to India in 2002 and had executed an agreement sometime in December, 2001. Though I would not like to express any opinion regarding the circumstances under which the agreement was executed, the fact remains that since 2002, the complainant is in India. The question whether the complainant was residing in the Juhu Bungalow or not is a question which will have to be decided by the City Civil court in the suit which is filed by the applicants or any other proceedings which may be instituted by the complainant. So far as the return of ornaments of the complainant are concerned, in view of the statement made by the learned Counsel appearing on behalf of the applicants, after taking instructions from their clients who are present in the Court, in my view that question also can be resolved by the parties. So far as the allegations which are made in the complaint by the complainant are concerned, it has to be noted that certain important facts have been suppressed by her or were not mentioned in the complaint. The complaint also is filed on the same day when an order of injunction was granted in favour of the applicants by the City Civil

Court. The delay of more than four years in filing the complaint has not been explained particularly when the complainant was in India since 2002 and the applicants and their son was in Dubai. Under these circumstances, prima facie case is made out for grant of anticipatory bail.

6. The applicants in the event of their arrest in connection with an offence registered with the Santacruz West Police Station, Mumbai, vide C.R.No.58/2006 under Sections 498A, 120B and 506 of the IPC, they shall be released on bail in the sum of Rs.10,000/- each with one or two sureties in the like amount.

. The application is disposed of in the above terms.

(V.M. Kanade, J.)